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RUEHCV/AMEMBASSY CARACAS 2115
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RUEHLI/AMEMBASSY LISBON 0094
RUEHLO/AMEMBASSY LONDON 0109
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RUEHMN/AMEMBASSY MONTEVIDEO 4310
RUEHNY/AMEMBASSY OSLO 0116
RUEHOT/AMEMBASSY OTTAWA 0457
RUEHPO/AMEMBASSY PARAMARIBO 0078
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RUEHSM/AMEMBASSY STOCKHOLM 0161
RUEHTC/AMEMBASSY THE HAGUE 0740
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SUBJECT: GOB PROPOSES PARALLEL INDIGENOUS LEGAL SYSTEM

REF: LA PAZ 17

Summary

¶1. (SBU) On January 1, President Morales proposed a new law to establish parallel indigenous (referred to as a "communitarian") legal systems whose authority will be binding. The GOB's plan calls for communitarian justice to be obligatory, at "the same level" as the formal legal system, and without interference from the formal legal system. The GOB acknowledges 36 indigenous groups encompassing 4 million people, but the GOB's new plan does not establish how many communitarian justice systems will be formed. A form of communitarian law has been legally valid for members of rural indigenous communities where no state prosecutors and judges are present since 1999. The GOB's proposed law requires the approval of both chambers of Congress. The MAS-controlled lower chamber will likely pass the GOB's plan, while the opposition-controlled Senate will almost certainly reject it. End Summary.

¶2. (U) The GOB's plan calls for communitarian justice to be obligatory, at "the same level" as the formal legal system,

and without interference from the formal legal system. Defendants charged with a crime in an indigenous community will be subject to the community's legal system regardless of the defendant's origin. However, non-indigenous defendants will have the option to refer their case to the traditional justice system. (Note: It is not clear what will happen to persons of one indigenous group charged with crimes in a different indigenous community. End Note). Local judicial authorities will be allowed to organize themselves as they wish according to their community's traditions. The GOB's proposal states that communitarian justice sentences will not exceed those of the formal legal system which excludes the death penalty.

¶3. (SBU) The GOB acknowledges 36 indigenous groups encompassing 4 million people, but the GOB's new plan does not establish how many communitarian justice systems will be formed. It is unclear according to the proposed law whether there will be 36 separate communitarian justice systems, or if there will be countless systems based on individual communities.

¶4. (U) A form of communitarian law has been legally valid for members of rural indigenous communities where no state prosecutors and judges are present since the revised criminal procedural code of 1999. Communitarian justice is typically administered by the leader of an indigenous group, but it can vary based on the traditions of the community. Communitarian justice has most commonly been applied in Aymara and Quecha rural communities. Under the current system, only rural

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peoples of the same indigenous community can be subjected to communitarian law, meaning that urban and non-indigenous people could not be judged under communitarian law.

¶5. (U) The GOB's proposed law (called a pre-project) requires the approval of both chambers of Congress. The GOB must send the pre-project to one of the two chambers of Congress. (Note: Congress is currently not in session. End Note). The chamber that receives the pre-project will be considered the "chamber of origin" and will be responsible for fulfilling all of the legislative requirements for drafting the future law. The chamber of origin can also make changes to the GOB's proposal and add articles as deemed necessary. Once the chamber of origin has drafted the future law, it is sent to the other chamber which is responsible for reviewing and amending the law. If the reviewing chamber makes any changes, the proposed law is returned to the chamber of origin for reconsideration. The reviewing chamber also has the authority to approve or reject the proposed law. If the two chambers cannot reach agreement, the proposed law is held and sent to the subsequent session of Congress (the 2008 Congress).

Comment

¶6. (SBU) The MAS-controlled lower chamber will likely pass the GOB's plan, while the opposition-controlled Senate will almost certainly reject it. Communitarian justice raises significant concerns regarding the potential for human rights abuses, violations of due process, and increased vigilantism.
End Comment.
GOLDBERG